

OGC 80-00733

28 January 1980

## OGC Has Reviewed

STATINTL MEMORANDUM FOR: [REDACTED]  
DC/Insurance Branch

STATINTL FROM: [REDACTED]  
Office of General Counsel

SUBJECT: GEHA: Definition of Dependent Child

1. An employee-policy holder wishes to add her minor brother, age 12, as a dependent child to her GEHA medical insurance plan. Her and the boy's deceased mother, a widow, executed a notarized document entitled, "request for transfer of legal guardianship," signed also by the daughter-foster mother and the minor child, in which the natural mother stated:

NOW, THEREFORE, the said [mother], until such time as she may recover from her current illness does hereby confer upon [daughter], all rights and obligations of legal guardianship of [son] and further requests that this transfer be subsequently ratified and confirmed by an appropriate Court of competent jurisdiction.

No court order appears to have been issued transferring legal guardianship of the minor boy.

2. The master contract between GEHA and the policy holder recites under the definition section:

'Covered family members' as regulated by definitions contained in FPM Supplement 890-1, are spouse and unmarried children under age 22, to include legally adopted children. Unmarried stepchildren, foster children, and recognized natural (illegitimate) married children under age 22 are also included if they live with you in a regular parent-child relationship.

Association Benefit Plan 1979, as revised  
January 1, 1979, BR1 (Rev) January 1979,  
U.S. Civil Service Commission, Bureau of  
Retirement, Insurance and Occupational Health,  
p.4. [Emphasis supplied.]

The referenced section of the FPM provides in all pertinent part:

a. General eligibility for coverage. (1) For health benefits purposes, family members are the employee's spouse and unmarried children under age 22, including legally adopted children. Stepchildren, foster children, and recognized natural (illegitimate) children are included if they live with the employee in a regular parent-child relationship. FPM Supplement 890-1, §S11-2 a(1).

e. Foster children. (1) The factors considered in determining whether or not a child is a foster child for health benefits purposes are: The child must live with the employee in a regular parent-child relationship; and the employee must be rearing the child as his or her own. The employee need not be related to the child nor have taken steps to legally adopt him or her, but there must be an expectation that the employee will continue to rear the child indefinitely into adulthood and usually the employee will be responsible, in whole or in part, for the child's support.

\* \* \*

. . . provided the employee is rearing the child as his or her own and expects to continue to rear the child into adulthood. FPM Supplement 890-1, §S11-2e(1), (2)

3. We conclude that the minor brother satisfies the requisite definition of foster child and that he may therefore be included on the employee's medical insurance. However, the notarized document the employee has submitted does not constitute a full legal adoption or transfer of guardianship. Her and the boy's best interests would be served if a formal court order were entered.



STATINTL

## ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

Deputy Chief, Insurance Branch  
926 Area

ATTENDING

NO

DATE

20 November 1979

TO: (Officer designation, room number, and building)

DATE

OFFICER'S  
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. CUC  
Attention: [REDACTED]  
7040, HCS

Bob:

Attached is a copy of FPM Supplement 890-1, Subchapter S11, which establishes the eligibility of a "family member" under the Federal Employees Health Benefits Program. Also attached are statements submitted by our employee in support of this FPM requirement.

Will you please advise us of your legal opinion as to whether or not the attached provides sufficient evidence to include our employee's brother as a covered family member on her family plan of health insurance.

Thank you, ILLEGIB

**Next 2 Page(s) In Document Exempt**

## Subchapter S11. Status of Family Members

### S11-1. GENERAL

The employing office is initially responsible for making any decisions about family member status for an enrolled employee. It should be pointed out to the employee that the carrier is not notified at the time of the original determination, but the carrier may, at the time benefits for that family member are claimed, request evidence to verify the eligibility of the family member.

### S11-2. FAMILY MEMBERS ELIGIBLE FOR COVERAGE

a. General eligibility for coverage. (1) For health benefits purposes, family members are the employee's spouse and unmarried children under age 22, including legally adopted children. Stepchildren, foster children, and recognized natural (illegitimate) children are included if they live with the employee in a regular parent-child relationship. An unmarried child age 22 or over who is incapable of self-support because of a mental or physical incapacity which existed before age 22 also is included if the incapacity is established as explained in subchapter S12. In determining whether or not a person is a family member, it is that person's relationship to the employee which is controlling.

(2) An employee who enrolls for self and family automatically includes all members of his or her family who are eligible to be covered. If a person who is not an eligible family member is listed on SF 2809, the employing office should explain to the employee that the person is not eligible for coverage, and delete the name from SF 2809. In any event, the listing on SF 2809 of a person who is not an eligible family member does not entitle that person to benefits and, conversely, an employee's failure to list an eligible family member does not deprive the member of the right to benefits under a family enrollment.

b. Effect of dissolution of child's marriage on family member status. (1) A child under age 22 who was married and divorced or widowed before the effective date of the parent's enrollment is a member of the employee's family. However, a child, who was married at the time the parent enrolled for self and family, or who married after the parent's family enrollment became effective, does not become a family member upon divorce or upon the death of a spouse. This rule cannot be circumvented by a cancellation and reenrollment, changing plans, or, when both parents are Federal employees, the cancellation of the existing enrollment and the enrollment of the other parent.

(2) Annulment of a marriage of a child under age 22 has the effect of restoring family member status to the child. The restoration of a child's family member status and coverage under a continuing family enrollment would date back to the effective date of the annulment decree in the case of a voidable marriage (that is, one that was legal when performed but was annulled, for example, for fraud or lack of consummation). If the marriage was void initially (ab initio)—that is, was illegal from the beginning as where one of the partners was already married—there is no break in family member status, and coverage under a family enrollment continues uninterrupted.

c. Adopted children. Applicable State law governs whether or not a child has been adopted. The child is adopted if the adoption decree is final. The child also is considered adopted if the adoption decree is interlocutory and State law provides that the rights of the child generally are the same as those of an adopted child.

d. Stepchildren and recognized natural children. (1) If not contrary to State law, the illegitimate child or the adopted child of the employee's spouse would be the employee's stepchild. However, the stepchild of the em-

ployee's spouse is not the employee's stepchild.

(2) Whether or not an employee's stepchild remains a stepchild, and a member of the family, after the employee's divorce from, or the death of, the natural parent, must be determined in accordance with applicable State law. In most States, the rule is that the relationship of stepchild continues. The minority rule is that the relationship is terminated by death of, or divorce from, the natural parent. If there is no authoritative State ruling, the majority rule will be followed. This does not affect the requirement, which still must be met, that the stepchild must live with the employee in a regular parent-child relationship.

e. Foster children. (1) The factors considered in determining whether or not a child is a foster child for health benefits purposes are: The child must live with the employee in a regular parent-child relationship; and the employee must be rearing the child as his or her own. The employee need not be related to the child nor have taken steps to legally adopt him or her, but there must be an expectation that the employee will continue to rear the child indefinitely into adulthood and usually the employee will be responsible, in whole or in part, for the child's support. A foster parent-child relationship between the child and an employee may exist, however, even though the child receives support from other than the employee (e.g., social security payments, support payments from a parent).

(2) Common examples of a foster parent-child relationship are: A child whose parents have died is living with, and being supported by, a grandparent (or other close relative) who is an employee; a child living with an employee under a preadoption agreement; a child who is in the legal custody of an employee. The fact that a child's natural parents are alive does not preclude existence of a foster parent-child relationship between the child and an employee with whom the child is living, provided the employee is rearing the child as his or her own and expects to continue to rear the

child into adulthood. If, however, one or both of the child's natural parents live with him or her and the employee, a foster parent-child relationship between the child and the employee would not ordinarily arise even if the employee were supporting the child.

(3) A child who has been placed in the employee's home by a welfare or social service agency under an agreement whereby the agency retains control of the child or pays for maintenance would not qualify as a foster child because there is no regular parent-child relationship. Similarly, an arrangement under which a child is living temporarily with an employee as a matter of convenience would not qualify the child as a foster child. For example, a child from a foreign country who lives with an employee while attending school in the United States normally would not qualify as a foster child because this would be considered an arrangement of convenience.

f. Effect of child's temporary absence on "living-with" requirement. Periods of temporary absence while attending school or for other reasons will not affect the status of stepchildren, foster children, or illegitimate children otherwise considered to be living with the employee in a regular parent-child relationship. Also, an employee's stepchild, foster child, or illegitimate child who lives with the employee at least six months of a year under a court order directing shared custody may be considered living in a regular parent-child relationship.

### S11-3. RELATIVES WHO ARE NOT FAMILY MEMBERS

Parents, and relatives, other than those mentioned in section S11-2 as eligible for coverage, are not members of the family within the meaning of the law and, even though they live with and are dependent upon the employee, are not eligible for coverage as family members.

### S11-4. CHANGE IN MARITAL STATUS

a. Registration opportunities. A change in marital status provides opportunity to enroll or